

Before the
Administrative Hearing Commission
State of Missouri



EMERSON SUTTON,)	
)	
Petitioner,)	
)	
vs.)	No. 13-0108 RI
)	
DIRECTOR OF REVENUE)	
)	
Respondent.)	

DECISION

We dismiss Emerson Sutton’s complaint for lack of jurisdiction.

Procedure

On December 3, 2012, Sutton filed a four-page letter addressed to the Director, Missouri Department of Revenue (the “Director” and the “Department”), the Missouri Real Estate Commission (the “MREC”), and to the Missouri Real Estate Appraisers Commission (the “MREAC”), along with several pages of documents, which we deemed a complaint. Because the complaint named three state agencies as respondents, we opened separate cases for each respondent.¹ The Director filed a motion to dismiss the complaint on February 19, 2013 (the “motion”), and Sutton filed a response to the motion on March 11, 2013.

On March 18, 2013, Sutton filed a pleading captioned as follows:

Motion To Introduce Exhibits For Review So That Dismissal Order Can Be Set Aside, “And/Or” So That Same Can Be Documented For Petitioner’s

¹ In separate orders dated March 6, 2013, we dismissed Sutton’s complaints against the MREC (our case #12-2136 RE) and MREAC (our case #12-2137 RA), for lack of jurisdiction.

Filing In The Circuit Court For Appeal Purposes, “And/Or” Document This Cause, So That It Is Requested That All Three (3) Agencies And All 3 Case Numbers, And Not Just The One Agency And The One Case Number Be Included In This Appeal To The Circuit Court For Review!!!

Because we understand the gravamen of this pleading to be Sutton’s disagreement with our failure to consolidate the three cases, as well as with our March 6 dismissals of his complaints against the MREC and the MREAC, we do not consider it relevant to his pending complaint or to our consideration of the Director’s motion.

Analysis

The Director’s motion asserts this Commission lacks jurisdiction under § 621.050,² which states:

Except as otherwise provided by law, any person or entity shall have the right to appeal to the administrative hearing commission from any finding, order, decision, assessment or additional assessment made by the director of revenue. Any person or entity who is a party to such a dispute shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after the decision of the director is placed in the United States mail or within thirty days after the decision is delivered, whichever is earlier[.]

Our jurisdiction comes from the statutes alone. *State Bd. of Registration for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

Therefore, we must examine Sutton’s complaint to determine whether we have jurisdiction.

Sutton’s alleges his licenses were suspended for failure to pay income taxes for the tax years 1997 through 2000 pursuant to § 324.010, which states, in pertinent part:

² RSMo 2000. Statutory references are to RSMo Supp. 2012 unless otherwise noted.

If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director [of revenue] shall then send notice to each such entity and licensee.

Sutton claims the Director applied the statute to him retrospectively, and that the Department has no right to collect any taxes owed prior to the date of the enactment of § 324.010 in 2004.³

Attached to Sutton's complaint is a copy of an August 14, 2012 certified letter addressed to Sutton from the Division of Professional Registration, which notified him that, pursuant to notice from the Department of Revenue that he had failed to file state tax returns and/or pay state tax liabilities, Sutton's professional license would be suspended on November 3, 2012 pursuant to § 324.010, unless his tax issues were resolved with the Department. Sutton also attached to his complaint a copy of correspondence to him from the Department dated November 2, 2012, requesting that Sutton contact the Department to establish or review a payment plan for tax liabilities for the tax periods ending December 31, 1997, 1998, 1999, and 2000. Notably, we find nothing in the complaint suggesting Sutton challenges these tax liabilities on any grounds other than that the Director may not retroactively apply § 324.010 to collect them; he does not claim the Director's determination of four years' tax liabilities is in error. Nevertheless, as relief, Sutton's complaint seeks a letter of tax clearance/no tax due; restoration of his real estate and real estate appraisers licenses; a formal written apology from the Director; and "damages to be determined."

The Director argues § 324.010 is nothing more than a notification statute requiring him to take the mandatory, ministerial act of notifying the licensing board and the taxpayer that a delinquency exists, which is precisely what the Director did in this instance. Sutton does not allege the Director issued any written finding, order, or decision, or asserted an assessment or

³ In our prior orders dismissing Sutton's cases against the MREC and the MREAC, we fully addressed his argument about the Director's alleged retroactive application of § 324.010. We decline to recite that analysis a third time here.

additional assessment is due. Simply put, Sutton complains of no action by the Director that is subject to review under our limited grant of jurisdiction in § 621.050.

Because this Commission was created by state statutes, we have only such authority as the statutes give us. We find no basis for jurisdiction under § 621.050, and Sutton has failed to cite any other basis for our jurisdiction in this case. Therefore, we have no choice but to exercise our inherent power to dismiss his complaint.

With this dismissal order and our previous orders dismissing Sutton's other two cases, the Commission's role in these cases is now over. We will not consider any further pleadings or argument from Sutton, and this Commission will not hold a hearing in any of Sutton's cases. If Sutton desires to contest this Commission's decisions in any of his cases, he must timely file a petition for judicial review.

Summary

Sutton cites no statutory authority for this Commission to assert jurisdiction over his complaint, and we find none under § 621.050.

We dismiss the complaint for lack of jurisdiction.

SO ORDERED on May 14, 2013.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner